

ARTICLE 3**STREET TREES AND PARKWAYS*****Section 11-301. Definitions.**

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SECTION 11-301. DEFINITIONS.

(a) Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning and application of words and phrases used in this article, and, except to the extent that a particular word or phrase is otherwise specifically defined in this section, the definitions and provisions contained in Article 3 (commencing with Section 1-301) of Chapter 1 of this Code shall also govern the construction, meaning, and application of words and phrases used in this article. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase which is derivative from it, or from which it is a derivative, as the case may be.

(b) "Block" shall mean all property fronting on both sides of a street between intersecting streets, or between an intersecting street and a right-of-way, water way, end of a cul-de-sac, or city-county boundary. Where a street is intercepted between two intersecting streets, the boundaries of the block shall be determined by the Director.

(c) "Director" shall mean the Parks and Recreation Director or his designee.

(d) "Parkway" shall mean that portion of public property available for planting between the street curb, or curb alignment, and the abutting private property line.

*Editor's note—Ord. 77-36, §§ 1, 2, adopted April 12, 1977 and effective May 13, 1977, specifically amended the Code by repealing former Art. 3, §§ 11-301—11-309, and adding in lieu thereof new Art. 3, §§ 11-301—11-310 as herein set out. Former Art. 3, which pertained to the same subject matter, had been derived from Ord. 6262, 1963; and, Ord. 68-1, 1968.

(e) "Preservation" shall mean acts to promote the life, growth, health, or beauty of trees, shrubs, or plants, including, but not limited to, pruning, trimming, topping, root pruning, spraying, mulching, fertilizing, cultivating, supporting, and treating for disease or injury.

(f) "Public property" shall mean any property or area owned by or under the control of the city, including public tree easements.

(g) "Public tree easement" shall mean an easement granted by a property owner to the city to permit the city to plant and preserve a tree in the property owner's front yard setback. (Added Ord. 77-36, § 2, eff. 5-13-77).

SECTION 11-302. PUBLIC TREE POLICY. It is hereby declared that the public interest and welfare require that the city maintain a program for the planting and preservation of trees on all public property in the city as a municipal affair in order to beautify the city, purify its air, and provide shade for its inhabitants. This article provides for plans and establishes regulations governing the planting and preservation of trees in public property, including parkways of the city. This article further provides for plans and establishes regulations for the selection of appropriate species of trees to achieve as much uniformity as possible for beauty and economy, and for a consistent and adequate program to preserve such trees. The Director shall enforce, implement, and carry out the policy, provisions, and regulations of this article in a manner which is consistent with other established policies of the city. (Added Ord. 77-36, § 2, eff. 5-13-77).

SECTION 11-303. DIRECTOR'S CONTROL. Except as otherwise provided in this article, the Director shall have exclusive control over the planting, preservation and removal of trees, shrubs and plants, and the performance of any work incidental thereto in, on or over any public property and any other city controlled property. (Added Ord. 77-36, § 2, eff. 5-13-77).

SECTION 11-304. TREE BEAUTIFICATION.

(a) *Master Tree Plan.* The Director is authorized to formulate a Master Tree Plan. Such Plan shall specify the species, spacing, and location of trees to be planted on public property, including parkways of the city. Such Plan shall include a Master Tree List and a Master Tree List-Parkway. The Master Tree List-Parkway shall include those trees which the Director determines may be planted in parkways without causing damage to any adjacent concrete improvement or underground utilities in such parkways. The Master Tree List shall include those trees which the Director determines may be planted in any public tree easement and public property, except parkways. The Director is authorized to amend, modify, and add to such Plan. All planting shall conform to such Plan. The Director shall consider the following factors in formulating such Plan:

(1) Such plan shall be coordinated with other established plans of the city; and

(2) Trees shall be selected and placed on an appropriate tree list based on such trees' desirable characteristics of growth and beauty, their root structure, and their adaptability to local climate and soil.

feasible, all trees in the city including, but not limited to, trees which are creating damage to surface improvements or underground facilities or which are diseased, or located where construction is being considered or will occur.

(b) **By the City.** The Director shall be responsible for the preservation and, when required herein, the removal of all trees on public property.

(c) **By the Property Owner.** Every property owner or his occupant shall be responsible for the normal care, including watering, of trees, shrubs and plants in such property owner's abutting parkway or in any public tree easement.

(1) Every property owner may apply without fee to the Director for a permit to trim or replace trees located on the public easement fronting his property at his expense, providing that the trees are trimmed or replaced by a professional tree service. Except that minor trimming to alleviate a dangerous condition presented by a tree may be done with prior Parks Department consent by the property owner without a permit. Any such trimming must be performed in a manner that insures tree preservation.

(2) The Director shall promulgate and implement permit procedures and standards to facilitate the issuance of such permits.

(d) Inspection and Removal.

(1) At such times and on such occasions as he deems appropriate, the Director shall inspect trees, shrubs and plants on any public property and on any private property if the trees, shrubs or plants overhang or project into public property.

(2) If any city-planted tree, shrub or plant in the city appears to the Director to be dead, liable to fall, dangerous, an obstruction to public travel, or is not pruned or trimmed to a height of fourteen feet, six inches above the paved portion of the street to accommodate such vehicles as garbage trucks, buses, moving vans and street maintenance trucks, the Director shall take the necessary corrective action.

(3) It shall be the responsibility of the property owner or his occupant to prevent any tree, shrub or plant on his private property or in the abutting parkway, other than city-planted trees, shrubs or plants, from overhanging or projecting into public property. The Director shall have the authority to require the property owner or his occupant to prune, trim, cut down or remove any such tree, shrub or plant, or part or parts thereof, if it appears to the Director to be dead, liable to fall, dangerous, an obstruction to public travel, or is not pruned or trimmed to a height of fourteen feet, six inches above the paved portion of the street to accommodate such vehicles as garbage trucks, buses, moving vans and street maintenance trucks. Except in case of manifest public danger and immediate necessity, no such tree, shrub or plant shall be pruned, trimmed, cut down or removed by the Director unless the Director has given the property owner and his occupant ten (10) days' written notice to take corrective action. If the necessary corrective action is not taken by the property owner or his occupant within ten (10) days, the Director shall perform the services and the costs thereof shall be assessed to the property owner, including the cost of labor (including overhead), equipment and materials.

(b) *Parkway Trees.* The city's policy shall be to plant in parkways only those trees included on the Master Tree List-Parkway. In selecting any particular species of trees from the Master Tree List-Parkway for planting in any parkway, the Director shall consider the following factors:

- (1) Overhead and underground facilities surrounding or in the parkway;
- (2) Location of any street and traffic signs;
- (3) Width of the parkway and the location of any concrete installation adjacent thereto;
- (4) Setback of any building from the parkway;
- (5) Parkway's soil condition; and
- (6) Existing landscape of the area.

(c) *Number and Size of Parkway Trees.* The Director shall plant trees in parkways at approximately sixty-foot intervals, provided he shall plant at least one tree taken from a five-gallon container for each lot or parcel. If the property owner desires more trees than the Master Tree Plan indicates that he is entitled to, or larger trees, or a combination of both, the Director shall plant such tree or trees provided that such property owner pays the additional cost in advance and such trees, considering the criteria specified in subsection (b) of this section, are acceptable to the Director.

(d) *Residential Property Owner's Option.* Any residential property owner may request that a tree on the Master Tree List be planted in such property's front yard setback instead of the abutting parkway. The Director shall plant such tree provided that such property owner gives a public tree easement to the city which shall provide as follows:

- (1) The city, acting through the Director, is granted the right of access to such front yard setback solely for the purpose of planting, preserving, and, if necessary, removal of such tree;
- (2) The property owner agrees not to remove such tree without the written permission of the Director.

If such property owner desires a tree from a container larger than a five-gallon container, but not to exceed a twenty-four-inch box container, or more trees than the Master Tree Plan indicates he is entitled to, or a combination thereof, the Director shall plant such tree or trees provided such property owner pays in advance any difference in costs.

(e) *Commercial or Industrial Property.* Tree planting in a parkway fronting commercial or industrial property may be waived by the Director if he determines that such property owner's proposed or existing landscaping is consistent with the Master Tree Plan. (Added Ord. 77-36, § 2, 5-13-77).

SECTION 11-305. TREE PRESERVATION.

(a) *Policy.* It shall be the city's policy to utilize whatever techniques, methods, and procedures are required to preserve, whenever

(4) If any tree on public property is infected or infested with insects, pests or disease, the Director shall cause such condition to be treated or, if any such tree is infected or infested to such a degree that such condition can not be eradicated by treatment, the Director may order the removal or replacement of such tree.

(5) It shall be the responsibility of the property owner or his occupant to treat or remove any tree, shrub, plant, grass or other

vegetation on his private property or in the abutting parkway, other than city-planted trees, shrubs or plants, if it is so diseased or insect-infected as to constitute a hazard to trees, shrubs or plants in public places. The Director shall have the authority to require the property owner or his occupant to take such action as is necessary to control insects, scales, parasites, fungi and other injurious pests, or diseases. The Director shall notify the property owner and his occupant in writing, describing the conditions, stating the control necessary for correction, and establishing a reasonable time within which the required steps must be taken. If the property owner or his occupant questions the necessity for such action, the Director shall refer the matter to a plant pathologist whose decision shall be final. If necessary corrective action is not taken within the time specified, the Director is authorized, in the public interest, to enter on the property in question and to spray, trim, prune, treat or remove all or any part of the tree, shrub, plant, grass or other vegetation determined to be infested or diseased. The cost of such service shall be assessed to the property owner, including the cost of labor (including overhead), equipment and materials.

(6) The Director, after unsuccessfully utilizing all techniques, methods and procedures which he deems reasonable to save trees planted on public property which are dead, dying, in a dangerous condition, unsafe or likely to cause damage, shall remove and replace such trees.

(e) **Interference with Employees.** No person shall interfere with or cause or permit any person to interfere with employees of the city who are engaged in the planting, preserving, maintaining, treating or removing of any tree or plant or related work in the city.

(f) **Other Unlawful Acts.** No person, except authorized city personnel, shall remove, destroy, deface or injure any tree on public property by any means including, but not limited to, the following:

(1) By pouring any material on any tree or on the ground which would be harmful to the tree;

(2) By attaching any sign or notice or other object on any tree or fastening any guy wire, cable, rope, nails or screws or any other device to any tree, except that agencies may, under the supervision of the Director, temporarily affix no parking signs to trees when necessary in conjunction with activities in the public interest, such as street improvement work, tree maintenance work, or parades;

(3) By causing or encouraging any unnecessary fire or burning near or around any tree;

(4) By constructing a concrete, asphalt, brick or gravel surface, or otherwise covering the ground within a one-foot radius of any tree so as to shut off air or water from the roots, except under written authority from the Director.

(g) **Unauthorized Plantings.**

(1) No person shall plant any tree, shrub or plant in any public property of the city or public tree easement without written permission of the Director.

(2) Any tree, shrub or plant, planted within any parkway or public tree easement without a written permit of the Director, may be removed by the Director. The Director shall notify the abutting property owner in writing, listing the unlawfully planted trees, shrubs or plants, ordering their removal, and establishing a reasonable time within which removal shall be accomplished. In the event the removal is not accomplished within a specified time, the Director is authorized to remove such trees, shrubs or plants and the cost thereof shall be assessed to the property owner. The charge assessed the property owner shall be equal to the cost of labor (including overhead), equipment and materials.

(h) Construction Areas.

(1) Any tree growing upon public property which is to be removed for construction purposes shall be replaced, if it is possible to do so in accordance with the city's tree planting policy. If the Director determines that a tree can be replaced, the person causing its removal shall, at his own expense, remove and replace such tree with a tree in a location and of a size and species to be determined by the Director. If the Director determines that a tree cannot be replaced, the person causing its removal shall, at his own expense, remove the tree and pay to the city the value of the tree, as fixed by the Director.

(2) Any tree growing upon public property near any excavation, construction or street work shall be sufficiently guarded and protected by those responsible for such work so as to prevent any injury to said tree. No person shall excavate any ditches, tunnels or trenches, or install pavement within a radius of four feet from any public tree without the written permission of the Director.

(3) Whenever any parkway is paved, openings at intervals and sizes determined jointly by the Public Works Director and the Parks and Recreation Director shall be left unpaved or covered in a manner acceptable to the Director. (Added Ord. 77-36, § 2, eff. 5-13-77; Am. Ord. 80-11, §§ 1, 2, eff. 2-15-80; Am. Ord. 85-91, § 1, eff. 7-19-85).

SECTION 11-306. REPEALED.

Editor's note—Section 6 of Am. Ord. 82-117, effective Nov. 26, 1982, repealed § 11-306, concerning parkway beautification, as derived from added Ord. 77-36, § 2, effective May 13, 1977, as amended by 82-16, § 1, effective March 5, 1982.

SECTION 11-307. SPECIAL TREE LIST. The Director is authorized to develop and maintain a Special Tree List. Such list is intended to include those trees of special interest to the city, including, but not limited to, landmark trees or trees of outstanding size or beauty. The Director shall give and encourage others to give such trees special treatment and care to retain and protect them. (Added Ord. 77-36, § 2, eff. 5-13-77).

SECTION 11-308. DEPARTMENTAL COOPERATION.

(a) The Director and the city departments and agencies shall cooperate in the enforcement of the provisions of this article. Such cooperation includes, but is not limited to, the provisions of this section.

(b) The Director of Public Works, or his designee, shall notify the Director of any permits issued for new improvements which might require the removal of or cause injury to any street tree or interfere with the fulfillment of the Master Tree Plan.

(c) If the installation or maintenance of any overhead or underground facility by a public utility is likely to cause injury to or any defacing, pruning, or scarring of any tree on city public property, such public utility shall first discuss with the Director alternatives to avoid such injury to or defacing, pruning or scarring of such tree, and shall be bound by his decision regarding the implementation of any such alternative or the implementation of measures designed to protect such tree. (Added Ord. 77-36, § 2, eff. 5-13-77).

SECTION 11-309. NONLIABILITY OF CITY. Nothing in this article shall be deemed to impose any liability upon the city or upon any of its officers or employees nor to relieve the owner and occupant of any private property from the duty to keep trees and shrubs upon private property or under his control or upon sidewalks and parkways in front of such private property in a safe condition. (Added Ord. 77-36, § 2, eff. 5-13-77).

SECTION 11-310. APPEALS. Any decision of the Director relating to the Master Tree Plan, Master Tree List, Master Tree List-Parkway, utility construction, installation or maintenance, or requiring notice to a private property owner, shall be appealable by any aggrieved person to the Chief Administrative Officer. An appeal shall be in writing, stating the decision appealed from and reasons for the appeal, and filed with the Director within a reasonable period of time or, in the case of a decision requiring notice, within ten days of service of the notice. The Chief Administrative Officer may reverse, modify or affirm the Director's decision in not less than ten nor more than sixty days after the filing of the appeal. The action of the Chief Administrative Officer shall be final. (Added Ord. 77-36, § 2, eff. 5-13-77).